IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O.No.576 of 1986
Date of Decision : 17.10.2007

Santosh Devi and others .....Appellants

versus

Chander Bhan and otherse .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.Simarjeet Singh, Advocate for the appellants.
Mr.Y.P.Malik, Advocate for respondent Nos.1 to 3.
Mr.L.M.Suri, Senior Advocate with
Mr.Neeraj Khanna, Advocate for respondent No.4.

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JUDGMENT

HEMANT GUPTA, J.

The challenge in the present appeal is to the award passed by the learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the `Tribunal') dated 2.4.1986 whereby the claim petition filed under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act') was dismissed on the ground that the appellants have failed to prove that the accident has occurred due to the rash and negligent driving of Chander Bhan, i.e. driver of the offending Tractor.

It is the case of the claimant-appellants that on 11.12.1984, Gopal Dass, predecessor-in-interest of the appellants, was coming from the side of Gandhi Adarsh College on his Motor-cycle bearing registration No.HYK-8971 and was going towards Samalkha on his left side at a moderate speed. From the other side, respondent No.1 came driving his Tractor from Samalkha side at a high speed and was going towards village

Chamrara. The said Tractor was being driven rashly and negligently. The Tractor struck against the the Motor-cycle of Gopal Dass and dragged him to some distance. Gopal Dass received injuries and succumbed to his injuries on 12.12.1984. The claimants are his widow, parents, brothers, sister and a minor son of the deceased. The claimants filed the claim petition under Section 110-A of the Act alleging therein that the deceased was employed as Octroi Clerk with Municipal Committee, Samalkha and was earning Rs.721/- per month as salary. Besides this, the deceased was earning Rs.1500/- per month from the sale of milk.

The respondents have denied the factum of accident. On behalf of the appellants, none of the eye witnesses was examined, although they have summoned Gobind Ram, author of the FIR. On the other hand, the respondents have examined driver of the Tractor Chander Bhan as RW-1, his brother Basti Ram as RW-2 and Mahabir as RW-3. The claimants have produced a copy of the Challan under Section 173 of the Code of Criminal Procedure including the FIR, as Exhibit P-2 and site plan Exhibit P-1. On the other hand, the witnesses of the respondents have taken a stand that in fact, they took the injured to the hospital and thus, the accident is not proved to have been caused with the Tractor of the respondent.

The learned Tribunal returned a finding that the appellants have failed to prove that the accident was caused by the driver of the Tractor and thus, it cannot be held that respondent No.1 was negligent in driving the Tractor.

Learned counsel for the appellants has vehemently argued that the FIR in respect of the accident, which occurred at 4.45 p.m. on 11.12.1984, was recorded at 6.15 p.m. The author of the FIR was one

Gobind Ram who is not related to the appellants. It is not the case of the respondents that the appellants have any enmity so as to involve respondent No.1 in a false case. The earliest version, in respect of the accident, contains the Tractor number and the name of the Tractor driver who has caused the accident. Therefore, it is for the respondents to explain that the accident was not caused due to the rash and negligent driving of respondent No.1, in view of the doctrine of res-ipsa-loquitur. Reliance is also placed on the judgment of this Court reported as "***Bansi Yadav and another versus Krishan Kumar and another, 2004 (2) PLR-234" and "Nirmala Kumari and others versus Union of India and another, 2005 (3) PLR-811".*** It was contended that the mode of proof of the FIR was not challenged. The FIR is a public document and certified copy of the same is ex facie admissible in evidence. The Post Mortem report Exhibit R-1 reflects the time of arrival of the injured in the hospital at 5.05 p.m. and that Basti Ram brought the deceased in the hospital. Basti Ram is none else, but real brother of the Tractor driver who has been examined as RW-2. It is further stated that this is moreso in the proceedings under the Act where the liability in Tort is to be fixed on the preponderance of probabilities. The respondents having failed to challenge the mode of proof of the FIR or its contents, it is not open for them to now state that the accident did not take place in the manner as stated in the FIR.

The said argument is supported by the view taken in ***Bansi Yadav's and Nirmala Kumari's case (supra).*** In the present case, the FIR records the Tractor number and name of the Tractor driver.

In view of the above, it is apparent that in fact, Basti Ram was present at the place of occurrence at the time of accident and he took the

injured in the hospital. The stand of the driver of the Tractor Chander Bhan and his brother Basti Ram that they have taken the injured to the hospital arriving at the scene of accident later on, cannot be believed. The Tractor cannot be used for transportation to take the injured to hospital. The respondents have removed the injured to the hospital only because they have met with an accident. The driver of the Tractor would take the injured to the hospital on his Tractor only into faced circumstances. It is the self serving statement produced by the respondent that the accident has not taken place with his Tractor. In fact, in the written statement, the respondents have not come with the plea that they took the injured to the hospital and it is the version given in evidence alone. Thus, they have improved upon the version in evidence that what was given in the written statement. It is for the respondents to prove the manner of accident and the doctrine of res-ipsa-loquitur. Having failed to prove or explain the same, it has to be held that the accident has occurred due to the rash and negligent driving of the Tractor driver. In these circumstances, the finding recorded by the learned Tribunal that the accident was not caused due to the rash and negligent driving of the driver of the Tractor, is not sustainable and, therefore, the same is set-aside. It is held that it was the Tractor being driven by Chander Bhan which has caused the accident.

Faced with the situation, learned counsel for the Insurance Company has vehemently argued that respondent No.1-Chander Bhan while appearing as RW-1 has admitted that he had no driving licence at the time of accident. A perusal of the statement of Chander Bhan-RW-1 shows that he has brought the driving licence which was issued on 16.1.1985 and it was valid only upto 15.1.1990. He has also deposed that he had the driving

licence earlier, but the same was lost. The accident has occurred only one month prior to the issuance of the licence i.e. on 11.12.1984. There is no evidence to the effect that Chander Bhan was disqualified for possessing the driving licence on the date of accident. Consequently, the Insurance Company is liable to make the payment in terms of the Insurance Policy Exhibit R-2.

Now coming to the quantum of compensation. The learned Tribunal has assessed the compensation to the tune of Rs.97,920/-. I do not find any reason to vary the said amount of compensation determined by the learned Tribunal.

In view of the above, the award passed by the learned Tribunal is set-aside while reversing the findings on Issue No.1. The appellants are found entitled to Rs.97,920/- alongwith interest @ 8% per annum from the date of filing the claim petition till its realization. Out of the total amount of compensation, 60% of the amount will be payable to Lakshmi Narain Gautam (appellant No.7) minor son of the deceased, whereas 20% each shall be payable to Santosh Devi, widow and Narain Dai, mother of the deceased Gopal Gautam.

The appeal stands disposed of accordingly.

17-10-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**